

WILKINSON) BARKER) KNAUER) LLP

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Federal Communications Commission
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November 30, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Certificate of Service - Cingular Virginia ETC Petition (CC Docket No. 96-45)*

Dear Ms. Dortch:


Attached please find the Certificate of Service showing service of the Petition of Cingular Wireless LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia on the Virginia State Corporation Commission.¹

Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By:


L. Charles Keller

Enclosure

cc: Vickie Robinson (email)

¹ See *Wireline Competition Bureau Invites Parties to Comment on the Petition of Cingular Wireless LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Public Notice, DA 06-2367 (rel. Nov. 27, 2006), at n.1.

No. of Copies 0
LIST AS DONE

CERTIFICATE OF SERVICE

I, Marc D. Knox, hereby certify that a copy of the Petition of Cingular Wireless LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, as filed in the public files of the Federal Communications Commission on November 7, 2006, was served this 30th day of November, 2006, via first class U.S. mail on the following:

Virginia State Corporation Commission
P.O. Box 1197
Richmond, Virginia 23218

A handwritten signature in black ink, reading "Marc D. Knox", written over a horizontal line.

Marc D. Knox

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Cingular Wireless, LLC)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the Commonwealth of Virginia)	
)	
To: Wireline Competition Bureau)	

OPPOSITION OF VERIZON¹

Introduction

Cingular's decision to seek federal subsidies to continue offering service and expand its reach in Virginia, an existing Cingular service area, demonstrates the urgent need for reform of the High Cost Fund. The Commission should take steps now to stop the growth of the fund and move quickly to implement reverse auctions for high cost subsidies and other more fundamental high cost reforms. The Commission should defer action on Cingular's November 7, 2006 petition for designation as an eligible telecommunications carrier ("ETC") in Virginia until a system of competitive bidding for high cost support is in place.

I. The Clock Is Ticking.

Regardless of how wireless carriers secure ETC designations, all carriers that obtain ETC status in a service area receive high cost support under the current rules. And high cost subsidies to competitive ETCs ("CETCs") have increased dramatically over the last several years. In

¹ The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

1999, wireless carriers received approximately \$500,000 in high cost support.² By 2002 high cost subsidies to wireless CETCs had increased nearly 100-fold to approximately \$45 million.³ In 2005, wireless CETCs received more than \$600 million in high cost subsidies, almost double the support received by wireless CETCs in 2004.⁴ Through May 18 of this year wireless CETCs had already received more than \$800 million in high cost subsidies, with approximately \$50 million in additional high cost support going to wireline CETCs over the same period.⁵ At this rate, CETCs will account for approximately 25 percent of high cost subsidies in 2006.⁶

Further, there are signs that wireless carriers will be even more aggressive in pursuing high cost support in the future. Cingular's petition is another clear warning. Additionally, just a few weeks ago Smith Bagley, Inc. ("SBI"), a wireless carrier operating in the Southwest, filed a petition for a writ of mandamus in the D.C. Circuit. SBI seeks an order requiring the Commission to act on SBI's pending petition for ETC designation within 45 days.⁷

² See USAC, *Distribution of High Cost Support Between Wireless and Wireline CETCs*, http://www.universalservice.org/_res/documents/about/pdf/fundfacts-High-Cost-Support-Between-CETCs-1998-2006.pdf.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ This is not to say that the problems with the High Cost Fund are limited to wireless carriers and other CETCs. Because current subsidies are tied to the ILEC's per-line costs, incumbents are largely guaranteed to receive year-over-year high cost support in an amount that shields them from shifts in consumer preferences for different technologies and other marketplace changes. This discourages incumbents from innovating and becoming more efficient, which then makes high cost subsidies all the more attractive to competitive carriers that are entitled to the same per-line support upon gaining ETC status. Ultimately, the Commission must find a way to encourage innovation and to ensure that all ETCs have the proper efficiency incentives.

⁷ Smith Bagley, Inc. Petition for Writ of Mandamus to the Federal Communications Commission, Docket No. 06-1379 (D.C. Cir. Nov. 15, 2006) at 1.

ETC designations in the states are also continuing independent of the Commission's designations. Pursuant to 47 U.S.C. § 214(e)(6), the Commission only has control over ETC designations of wireless carriers in a handful of states where state commissions have found that they lack jurisdiction to designate wireless carriers as ETCs. Unlike Virginia, most states have asserted jurisdiction over wireless carriers for purposes of ETC designation pursuant to 47 U.S.C. § 214(e)(2).

Left unchecked the trend of escalating subsidies to CETCs will continue – and may well worsen. Funding Cingular in Virginia (and potentially elsewhere) would encourage more ETC filings by wireless providers and other competitive carriers, further straining the fund and increasing the duplicative support paid out in areas where one or more ETCs are already subsidized.

II. Support Of Multiple Universal Service Networks Is Unnecessary And Inconsistent With The Public Interest Standard.

Cingular's petition is a good example of one of the many problems with the High Cost Fund. High cost support often flows to carriers that would offer the same services in the same service areas without any subsidy whatsoever. Moreover, in funding both the ILEC and one or more CETCs in many areas, consumers subsidize universal access often several times over.

For its part, Cingular claims to be the largest wireless company in the country with approximately 58 million wireless customers.⁸ In 2005, Cingular enjoyed annual revenues of approximately \$34.4 billion and a net income of \$333 million.⁹ Cingular self-promotes an ability "to provide cellular or PCS wireless communications services covering an aggregate of

⁸ Cingular, *About Us – Cingular At a Glance*, <http://www.cingular.com/about/>.

⁹ Cingular Wireless LLC, Securities and Exchange Commission Form 10-K (filed Feb. 24, 2006) at 2, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=125269&p=irol-SECText&TEXT=aHR0cDovL2NjYm4uMTBrd2l6YXJkLmNvbS94bWwvZmlsaW5nLnhtbD9yZXBvPXRlbmsmaXBhZ2U9Mzk5MDkxMiZkb2M9MSZudW09Mw==>.

294 million in population (POPs) or approximately 99% of the U.S. population, including all of the 100 largest U.S. metropolitan areas.”¹⁰

In Virginia, Cingular has built new cell sites without high cost subsidies and has invested heavily in the region. “The Cingular Wireless market of Maryland, DC and Virginia is [sic] extends more than 20,000 square miles and covers a population in excess of 7 million. Last year, Cingular spent more than \$120 million implementing an advanced GSM/GPRS network and enhancing coverage and capacity throughout the region.”¹¹ That Cingular covets Virginia wireless customers comes as no surprise. Virginia is a huge state, the 12th largest in the nation with a population of more than seven million.¹²

The Act and the Commission’s rules require any new ETC designations by the Commission to be “consistent with the public interest, convenience and necessity.” 47 U.S.C. § 214(e)(6); *see also* 47 C.F.R. § 54.202(c). The Commission has previously found that the public interest standard applies “regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.” *Federal State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6389 ¶ 42 (rel. March 15, 2005) (“2005 Order”). Even though the Commission has declined to adopt “a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund,” it did not limit the public interest standard to exclude consideration of the impact on the fund. 2005 Order, ¶ 54. To the

¹⁰ *Id.*

¹¹ *See* Cingular MediaRoom – News Releases, *Cingular Wireless Network Expansion Enhances Fredericksburg Wireless Experience* (July 12, 2004), http://cingular.mediaroom.com/index.php?s=press_releases&item=1005; *see also* Cingular Wireless Network Expansion Enhances Culpepper Wireless Experience (Aug. 4, 2004), http://cingular.mediaroom.com/index.php?s=press_releases&item=1133.

¹² *See* United States Census Bureau, U.S. Census 2000, *States Ranked by Population: 2000*, <http://www.census.gov/population/cen2000/phc-t2/tab01.pdf>.

contrary, the Commission recognized that whether approval of a new ETC “could impose strains on the universal service fund” was within the legitimate scope of inquiry when evaluating ETC applications. *2005 Order*, ¶ 55.

Through its petition, Cingular, some 58 million wireless customers strong, seeks ETC status for the provision of wireless services in one of the largest states in the country. If granted, subsidizing Cingular’s services in Virginia could have a real impact on the fund.¹³ Moreover, funding Cingular would continue the trend of subsidizing more and more CETCs with universal service funds in an increasing number of service areas. As discussed above, the collective impact of this and other USF practices has been a dramatic increase in the size of the High Cost Fund over the last several years. It is axiomatic that year-over-year increases of hundreds of millions of dollars in subsidies are ultimately not sustainable – and therefore at some point contrary to the public interest.

The Commission’s current portability rules provide that all carriers that obtain ETC status, regardless of need or demonstrable efficiency, automatically receive the same per-line subsidy as the ILEC. 47 C.F.R. § 54.307. And a number of wireless carriers, Cingular’s competitors, already enjoy ETC status in Virginia and the redundant subsidies that flow from CETC designations. Wireless carriers currently operating as CETCs in Virginia include Alltel, Highland Cellular, Sprint, Virginia Cellular, and Virginia PCS Alliance.¹⁴

¹³ In addition to evaluating the potential impact on the fund if Cingular’s petition is granted, the Commission must also look closely at Cingular’s application to ensure that high cost funds will be used to actually “improve signal quality, coverage, or capacity” and not merely to boost Cingular’s profit margins on existing customers. 47 C.F.R. § 54.202(a)(6)(ii).

¹⁴ See USAC, *HC20 - CETC Reported Lines by Incumbent Study Area - Interstate Access Support - 1Q2007*, <http://www.usac.org/about/governance/fcc-filings/2007/quarter-1.aspx>.

III. The Time For Reform Is Now.

It is ultimately consumers who pay for the growing High Cost Fund. Even if there were no additional growth in the fund, by the end of this year the total High Cost Fund would be larger than \$4.1 billion per year¹⁵ – more than double the size of the fund just seven years ago.¹⁶ This trend cannot continue. See, e.g., *Alenco Communications v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (“[E]xcess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.”).

The solution requires prompt action. Cingular’s petition highlights the immediate need for the Commission to take steps to stop the growth of the fund. As a part of broader high cost reform, the Commission should move expeditiously toward a system of competitive bidding for high cost support as contemplated by the Federal-State Joint Board on Universal Service in the Joint Board’s recent Public Notice regarding the merits of using reverse auctions to determine high cost subsidies. For all of the reasons discussed by commenters in the Joint Board docket, reverse auctions can work to distribute high cost subsidies to the most efficient carrier capable of providing supported services for the lowest amount of subsidy.

¹⁵ See USAC, *HC02 - High Cost Support Projected by State - 4Q2006*, <http://www.usac.org/about/governance/fcc-filings/2006/quarter4/default.aspx>.

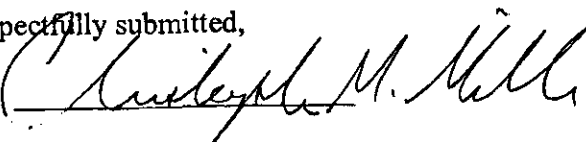
¹⁶ See USAC, *Universal Service Fund Facts-High Cost Program Data, 1998-2005 Disbursements by Calendar Year (2005)(Unaudited)*, <http://www.universalservice.org/about/universal-service/fund-facts/fund-facts-high-cost-program-data.aspx#calendar>.

Conclusion

The Commission should immediately take steps to stop the growth of the fund, move quickly to implement reverse auctions for high cost subsidies and other more fundamental high cost reforms, and defer action on Cingular's petition until a system of competitive bidding for high cost support is in place.

Respectfully submitted,

By:



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Attorneys for Verizon

December 4, 2006

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Washington, D.C. 20554**

In the Matter of)	
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Federal State Joint Board on)	
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)	CC Docket No. 96-45
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Telecommunications Carrier in the)	
Commonwealth of Virginia)	

OPPOSITION OF EMBARQ CORPORATION

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SUMMARY OF COMMENTS

Universal service funds should be used to support the provision of telecommunications service where it would not be economically feasible to do so under market conditions; it should not be wasted on uneconomic arbitrage (cream skimming). Cingular Wireless, LLC is attempting to turn this important public policy on its head in its petition to be as an Eligible Telecommunications Carrier (ETC) in the Commonwealth of Virginia (the Petition). Moreover, Cingular fails to carry its burden of proof of several specific criteria the Commission has established for ETC designation. Therefore, the Petition should be denied with respect to the Embarq study areas in the Commonwealth. Moreover, the Commission should suspend its consideration of the Petition pending its review of federal high-cost support.

Cingular provides service to less than one-third of Embarq's service territory in the Commonwealth, and Cingular's service area is concentrated in the low-cost, easier-to-serve parts of the Embarq study areas. Cingular most likely is not seeking to provide new or facilities-based service where it would not be available otherwise through market competition. Instead, it appears that Cingular intends to engage heavily in the kind of cream skimming Chairman Martin and the Commission consistently have opposed. Moreover, it is likely that Cingular is planning to rely heavily on resale to meet the criteria for ETC designation. Cingular seeks, therefore, to divert high-cost support away from its intended purpose—supporting the cost of providing carrier-of-last-resort service to customers that would not otherwise have access to telecommunications.

Rather than support true carrier-of-last-resort services, Cingular appears interested in using federal universal service support to benefit a comparatively small number of wireless subscribers that already have other options for telecommunications service. Such a diversion

would undermine Embarq's ability to provide critical network infrastructure comparatively larger numbers of customers in high-cost areas that have no alternative source of telecommunications services. This is uneconomic arbitrage, which harms consumers and violates the purpose and provisions of the Communications Act and Commission rules. Accordingly, the Petition is inconsistent with the public interest and fails to satisfy several specific criteria in the *ETC Designation Order*. It should be denied.

The Cingular Petition Is Not Consistent with the Public Interest. Cingular must prove that the public interest would be served by designating it as an ETC. Cingular has not met this burden and, indeed, it cannot do so under the terms set out by the Commission in the *ETC Designation*. The Petition creates abundant cream-skimming concerns of just the sort that have given the Commission pause. Cingular has not shown how granting it ETC status would offer an overall beneficial change in customer choice; nor has Cingular proven that it will offer any unique advantages to most of the customers in the areas for which it has sought ETC status. Finally, granting Cingular ETC status in Virginia would be harmful to the overall purposes and long-term sustainability of federal universal service support.

The Cingular Petition Also Fails to Satisfy The Specific Requirements Of The ETC Designation Order. Cingular has not met its burden of proof on several of the elements set forth by the Commission in its decision establishing ETC criteria; in fact, the Petition raises more questions than it answers. Notably, it is not clear how Cingular can even make a credible commitment to provide the supported services to all requesting customers in its proposed service territory. In addition, Cingular's coverage is so lacking in Embarq's service area that one cannot imagine how it can, on balance, show that the universal service funds will improve coverage,

signal strength, or capacity overall compared with what would happen should Cingular not receive universal service support.

The Petition is Inconsistent with the Objectives of the Communications Act. Cingular's Petition should be rejected for a third reason—it is inconsistent with the objectives of the Communications Act. Universal service support is intended under the Act to replace implicit subsidies, and it should be used to support the cost of providing service where it would not be economically feasible to do so. Therefore, universal service support should be tied to true carrier of last resort obligations, by which incumbent local exchange carriers (ILECs) such as Embarq are required to build network facilities where they would not otherwise do so because it is not economically feasible, and provide service at rates that do not cover the cost of providing service.

Competitive neutrality will be violated and, ultimately, the entire system of universal service will unravel if competitive ETCs are able to receive support without incurring comparable service obligations across comparable geographical areas. The system is designed to work when all ETCs are providing service where it is not economically feasible to do so otherwise, and at rates that do not cover the costs of providing service. Cingular claims in the Petition that it will build additional cell sites, presumably extending its network beyond where it was economically feasible to deploy facilities in the absence of support. A problem with the Petition, however, is that Cingular's coverage is so sparse in many of the wire centers where it seeks designation, however, that Cingular cannot credibly commit to providing service using its own facilities in such a way as to incur carrier-of-last-resort obligations that are remotely comparable to those incurred by Embarq and other ILECs. Therefore, granting Cingular ETC status will violate competitive neutrality and ultimately threaten universal service.

The Commission Should Suspend Its Consideration of the Petition Pending Review of the High-Cost Fund. Embarq also submits that the Commission to suspend its review of the Petition. As Chairman Martin noted while serving as Commissioner, petitions such as this one “may prejudice the on-going work of the Federal-State Joint Board regarding the framework for high-cost universal service support.” The Commission should not allow for the possibility of distractions from this important industry-wide review, particularly given that pending applications could be rendered moot by Commission action on a Joint Board recommendation.

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Cingular provides service to less than one-third of Embarq's service territory in the Commonwealth, and Cingular's service area is concentrated in the low-cost, easier-to-serve parts of the Embarq study areas. Cingular most likely is not seeking to provide new or facilities-based service where it would not be available otherwise through market competition. Instead, it appears that Cingular intends to engage heavily in the kind of cream skimming Chairman Martin and the Commission consistently have opposed. Moreover, it is likely that Cingular is planning to rely heavily on resale to meet the criteria for ETC designation. Cingular seeks, therefore, to divert high-cost support away from its intended purpose—supporting the cost of providing carrier-of-last-resort service to customers that would not otherwise have access to telecommunications.

Rather than support true carrier-of-last-resort services, Cingular appears interested in using federal universal service support to benefit a comparatively small number of wireless subscribers that already have other options for telecommunications service. Such a diversion

would undermine Embarq's ability to provide critical network infrastructure comparatively larger numbers of customers in high-cost areas that have no alternative source of telecommunications services. This is uneconomic arbitrage, which harms consumers and violates the purpose and provisions of the Communications Act and Commission rules. Accordingly, the Petition is inconsistent with the public interest and fails to satisfy several specific criteria in the *ETC Designation Order*. It should be denied.

The Cingular Petition Is Not Consistent with the Public Interest. Cingular must prove that the public interest would be served by designating it as an ETC. Cingular has not met this burden and, indeed, it cannot do so under the terms set out by the Commission in the *ETC Designation*. The Petition creates abundant cream-skimming concerns of just the sort that have given the Commission pause. Cingular has not shown how granting it ETC status would offer an overall beneficial change in customer choice; nor has Cingular proven that it will offer any unique advantages to most of the customers in the areas for which it has sought ETC status. Finally, granting Cingular ETC status in Virginia would be harmful to the overall purposes and long-term sustainability of federal universal service support.

The Cingular Petition Also Fails to Satisfy The Specific Requirements Of The ETC Designation Order. Cingular has not met its burden of proof on several of the elements set forth by the Commission in its decision establishing ETC criteria; in fact, the Petition raises more questions than it answers. Notably, it is not clear how Cingular can even make a credible commitment to provide the supported services to all requesting customers in its proposed service territory. In addition, Cingular's coverage is so lacking in Embarq's service area that one cannot imagine how it can, on balance, show that the universal service funds will improve coverage,

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Universal service funds should be used to support the provision of telecommunications service where it would not be economically feasible to do so under market conditions; it should not be wasted on uneconomic arbitrage (cream skimming). Cingular Wireless is attempting to turn this important public policy on its head in the Petition of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia (the Petition).¹ Cingular fails, therefore, to meet its burden of proof so the Petition should be denied.

Cingular is seeking in the Petition to be designated as an Eligible Telecommunications Carrier² (ETC) throughout all of the Commonwealth of Virginia currently served by Embarq Corporation.³ As the operator of carrier-of-last-resort networks in rural areas of Virginia,

¹ Cingular Wireless, LLC, Petition of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed Nov. 7, 2006).

² 47 U.S.C. § 214(e).

³ Embarq provides local, long-distance, mobile, and data services to over seven million lines in eighteen states. In the Commonwealth of Virginia, Embarq operates as the Central Telephone Company of Virginia and United Telephone-Southeast, Inc.

Embarq has unique information and experience to contribute to the Commission's consideration of the Petition.

Cingular provides service to less than one-third of Embarq's service territory in the Commonwealth, and Cingular's service area is concentrated in the low-cost, easier-to-serve parts of the Embarq study areas. Cingular most likely is not seeking to provide new or facilities-based service where it would not be available otherwise through market competition.⁴ Instead, it appears that Cingular intends to engage heavily in the kind of cream skimming Chairman Martin and the Commission consistently have opposed. Moreover, it is likely that Cingular is planning to rely heavily on resale to meet the criteria for ETC designation. Cingular seeks, therefore, to divert high-cost support away from its intended purpose—supporting the cost of providing carrier-of-last-resort service to customers that would not otherwise have access to telecommunications.

Rather than support true carrier-of-last-resort services, Cingular appears interested in using federal universal service support to benefit a comparatively small number of wireless subscribers that already have other options for telecommunications service. Such a diversion would undermine Embarq's ability to provide critical network infrastructure comparatively larger numbers of customers in high-cost areas that have no alternative source of telecommunications services. This is uneconomic arbitrage, which harms consumers and violates the purpose and provisions of the Communications Act⁵ and Commission rules. The

⁴ Cingular's plans for using universal service support should it be designated an ETC are contained in Exhibit E to the Petition, for which Cingular requested confidential treatment pursuant to section 0.459 of the Commission's rules. Embarq has not yet reviewed Cingular's plans, therefore, but a common-sense review of the extent of Cingular's coverage in Embarq's service area produces the inescapable conclusion that Cingular does not intend to serve the more remote parts of the Embarq study areas.

⁵ 47 U.S.C. § 254.

Commission should dismiss the Petition, therefore, at a minimum with respect to the Embarq study areas.

The Commission Should Suspend Its Review of the Petition Pending Review of the High-Cost Fund. Embarq also submits that the Commission to suspend its review of the Petition. As Chairman Martin noted while serving as Commissioner, petitions such as this one “may prejudice the on-going work of the Federal-State Joint Board regarding the framework for high-cost universal service support.”⁶ The Commission should not allow for the possibility of distractions from this important industry-wide review, particularly given that pending applications could be rendered moot by Commission action on a Joint Board recommendation.

I. CINGULAR SHOULD NOT BE DESIGNATED AS AN ETC IN VIRGINIA.

Cingular has not met its burden of proof and should not be designated as an Eligible Telecommunications Carrier in Virginia. In particular: (1) the Petition is against the public interest; (2) the Petition does not satisfy the terms of the Commission’s decision (*ETC Designation Order*)⁷ setting the minimum requirements for designation as an ETC; and (3) it is inconsistent with the objectives of the Communications Act.

A. Granting The Cingular Petition Would Harm The Public Interest.

Cingular must prove that the public interest would be served by designating it as an ETC.⁸ Cingular has not met this burden and, indeed, it cannot do so under the terms set out by

⁶ Dissenting Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an ETC in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion & Order, 19 FCC Rcd 1563, ____ (2004) (*Virginia Cellular Dissent*).

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report & Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*).

⁸ *Id.*, at ____ ¶¶ 40-44.

the Commission. The Petition creates abundant cream-skimming concerns of just the sort that have given the Commission pause. Cingular has not shown how granting it ETC status would offer an overall beneficial change in customer choice; nor has Cingular proven that it will offer any unique advantages to most of the customers in the areas for which it has sought ETC status. Finally, granting Cingular ETC status in Virginia would be harmful to the overall purposes and long-term sustainability of federal universal service support.

1. Cingular's Petition Creates Cream-Skimming Concerns in Abundance.

When he was a Commissioner, Chairman Martin wrote that he would prefer that:

the Commission require ETCs to provide service throughout the same geographic service area in order to receive universal service support. This obligation would help guard against the potential for creamskimming. I would have supported a recommendation to deny future requests to redefine the service areas of incumbent rural telephone companies--and to deny ETC designations in instances where an ETC's proposed service area does not cover the entire service area of the incumbent service provider.⁹

Interestingly, Cingular has requested ETC designation throughout virtually the entire Commonwealth of Virginia, including all of Embarq's wire centers in the Commonwealth. In reality, however, this has not guarded against the potential for cream-skimming; instead, it has increased the likelihood that such uneconomic arbitrage would occur. In fact, the Petition creates even greater cream-skimming concerns that it would have if Cingular had not petitioned for ETC status in every wire center.

Embarq operates as a rural carrier in Virginia. Both of Embarq's operating entities—Central Telephone Company of Virginia and United Telephone-Southeast, Inc.—are designated

⁹ Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 ____ (2004) (*ETC Designation Recommended Decision Separate Statement*).

“rural” for purposes of federal universal service. In its decision on the Virginia Cellular ETC Petition¹⁰ and its decision on the Highland Cellular ETC Petition,¹¹ the Commission offered extensive discussions of the potential for cream-skimming in rural areas. The Commission also suggested that concerns regarding potential cream-skimming should factor into the public interest analysis of a petition for ETC designation in rural carriers’ areas.

In those orders the Commission stated that cream-skimming “occurs when competitors seek to serve only the low-cost, high-revenue customers in a rural telephone company’s study area.” That statement, while not incorrect, is incomplete and over-simplistic. Cream-skimming can occur two different ways:

1. When a competitor only serves customers in low-cost areas, and does not serve high-cost areas (the Commission’s definition); and
2. When a competitor limits its network deployment to low-cost areas, and serves high-cost areas by purchasing the retail services of other providers at below-cost rates and reselling them.

In both cases, the competitor is avoiding the actual costs of serving high-cost areas. In the first case, the competitor avoids the costs by not entering the market at all. In the second case, the competitor avoids the costs by selectively relying on resale. In both cases the competitor is, in fact, cream-skimming because the competitor is selectively incurring only those costs that will not reduce its profitability below a certain level; the only difference is the method by which the competitor manages to avoid the high costs.¹²

¹⁰ *Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an ETC in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion & Order, 19 FCC Rcd 1563, ____ ¶¶ 31-35 (2004) (*Virginia Cellular*).

¹¹ *Federal-State Joint Board on Universal Service/Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Order, 19 FCC Rcd 6422, ____ ¶¶ 26-33 (2004) (*Highland Cellular*).

¹² Textbook definitions of cream-skimming do not generally incorporate the existence of

The Commission's discussions of cream-skimming in *Virginia Cellular* and *Highland Cellular* are limited to examinations of cream-skimming across wire centers.¹³ The Commission did not address the very real problem of cream-skimming within a single wire center. Moreover, the Commission did not assess the role that resale plays in facilitating cream-skimming. Cingular's petition is a case-study of cream-skimming within individual wire centers that is facilitated by its ability to rely on "a combination of its own facilities and resale."

Embarq's Meadowview wire center offers a clear illustration of this cream-skimming. The Meadowview wire center is located in south eastern Virginia, and has fewer than 2,000 households in it. According to the Commission's Synthesis Model (also referred to as HCPM) the forward-looking economic cost of serving this wire center is \$44.34 per line, *on average*. The higher-density portions of Meadowview, located in the southern part of the wire center along Interstate 81, would have a cost per line well below \$44.34, and the more sparsely populated portions in the north would exhibit a much higher cost. According to coverage maps available on its website, Cingular's coverage is entirely limited to the southern half of the wire center along Interstate 81—the lower-cost areas. In fact, it appears that Cingular has *no* coverage in the higher-cost, lower-density, northern half of the wire center.

Because Cingular has no network in the higher cost portion of the wire center, and because it has committed to serve the entirety of the wire center, it will purportedly rely on resale to fulfill its obligations. *In doing so, it avoids the costs of actually serving the high cost areas just as surely as if it had not entered the high-cost portion of the market at all.* Embarq's retail

regulation-based market distortions such as the mandate that incumbents must resell their telephone services to competitors at what are, in fact, below-cost rates. Therefore it is not surprising that such definitions limit the mechanism by which high-costs may be avoided to "not entering" a market.

¹³ *Supra*, nn.10-11.